(1)

Supreme Court, U.S.
FILED

95-460 JUN 12 1995

CASE NO. OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

JOHN C. HUME, PRO SE - PETITIONER

vs.

HAROLD STERLING, INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY ASSESSOR OF PROPERTY, AND BOB PATTERSON, INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY TRUSTEE, AND WILLIAM N. MORRIS, JR., INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY MAYOR.

- RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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13 pp

QUESTIONS PRESENTED

Does the Tax Injunction Act prohibit going to federal court when the local and state courts are not a plain, speedy and efficient remedy?

Is it constitutional for a county to speculatively appraise residential property owned by a citizen for a long time instead of using the last sale price until sold by a willing seller to a willing buyer?

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 6

CONCLUSION 7

TABLE OF AUTHORITIES CITED

CASES	PAGE
Haines v. Kerner 404 US 520	5
Hillsborough Twp. v. Cromwell (1946)326 US 620,90L ed 358, 66,S Ct 445	4
Huntington v. Attrill (118 N.Y. 365)	6
Louisville & Nashville R. Co. v. Public Service Comm. (1966,DCTenn) 249 F. Supp 894	4
Marbury v. Madison 1 C. 137 p.391 (1803)	8
Matter of Thompson (127 N.Y. 463)28 N.E. 389	6
Miranda v. Arizona 384 US 436 page 491	8
Nordlinger v. Hahn 112 S Ct 2326 (1992)	7
People ex v. McCarthy (102 N.Y. 630-638)	6
STATUTES	
Tenn. Code Annotated 67-5-601	6
UNITED STATES CODE Title 28, Section 1341	4

Title 28, Section 1331 2

Title 28, Section 1291 2

UNITED STATES CONSTITUTION

5th Ammendment 2

10th Ammendment 2

14th Ammendment 2 & 7

OTHER

California Law Review
Vol.65:843 n. 89 3

NO._____

IN THE SUPREME COURT

OF THE UNITED STATES OF AMERICA

OCTOBER TERM 1994

JOHN C. HUME, PETITIONER

vs.

HAROLD STERLING, ET AL, RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, John C. Hume, in Propria Persona, respectfully prays that a writ of certiorari issue to review the judgement and opinion of the United States Court of Appeals for the Sixth Circuit refusing to consider his request for constitutional relief from the speculative and arbitrary method of tax appraisals in Shelby County, State of Tennessee.

JURISDICTION

The Court of Appeals Opinion in this matter was filed on March 13, 1995. The District Court had subject matter jurisdiction over this matter pursuant to 28 USC 1331. The Appeals Court had subject matter jurisdiction pursuant to 28 USC 1291.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Art. 3 Sec. 2 U.S. Constitution
2. Art. 4 Sec. 1 & 2 U.S. Constitution
3. 5th Ammendment to U.S. Constitution
4. 10th Ammendment to U.S. Constitution
5. 14th Ammendment to U.S. Constitution

STATEMENT OF THE CASE

As far back as 1980, I, the Petitioner, have objected to the increases in my property reappraisals. In this instance, the 1991 property reappraisals

increased dramatically although the residential property had not changed except for the dwellings to grow older. Beginning on 3-11-91 I had meetings with representatives from the Shelby County Tax Assessors Office, the Shelby County Board of Equalization and the Tennessee State Board of Equalization. Under the adequacy doctrine of the 1937 Act the word "courts" has been construed to embrace administrative tribunals. California Law Review Vol.65:843 n.89.

I then appealed to the State of Tennessee Assessment Appeals Commission. This hearing was on 10-28-92. I did not get a Final Decision and Order from them until after 11-12-93. I again wrote a letter to the Tennessee State Board of Equalization Assessment Appeals Commission stating my reasons for protesting higher appraisals. On 1-3-94, I received an Official Certificate of the Assessment

Appeals Commission relative to the 1991 Property Assessments. They did not reduce the appraisals further. This had now gone on for almost three years.

Because I could plainly not receive a plain, speedy and efficient remedy in the state of Tennessee, the Tax Injunction Act 28 USC 1341 would not apply. Additionally this unnecessary step would be costly in fees and time. In the following cases state remedies were held inadequate so as not to preclude federal jurisdiction under 1341: Louisville & Nashville R. Co. v. Public Serv. Com. (1966, DC Tenn)249 F Supp 894. Hillsborough Twp. v. Cromwell (1946)326 US 620,90 L ed 358,66 S Ct 445.

I proceeded to file my complaint in the Federal District Court. The District Court dismissed for lack of subject matter jurisdiction. As pro se, in my informal pleading, I have not had the opportunity to present all of my evidence of facts to

support my complaint. Haines v. Kerner 404 US 520.

Since Oct. 1994, the respondents have been bringing suit against me to recover all of the attorney fees of the salaried Assistant Attorney employed by the county because to this point they are the prevailing party.

The only monetary relief I am requesting is a refund of taxes overpaid and the reduction in the appraisal of my property to the last sale price. The county could then adjust the tax rate on all properties as necessary.

Some large corporations have been given huge tax breaks which puts a burden on all other residential and commercial properties. For the years 1960 to 1978 I was erroneously classed as commercial.

The value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for

purposes of sale between a willing seller and a willing buyer without consideration of speculative values. Tenn. Code Annotated 67-5-601. There are a number of decisions indicating the tendency of the court to be against proving value by evidence of the selling price of similar property. Matter of Thompson (127 N.Y. 463) 28 N.E. 389; Huntington v. Attrill (118 N.Y. 365); People ex v. McCarthy(102 N.Y. 630-638).

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari here to explicitly rule that the method of speculative property appraisals in the State of Tennessee is inequitable and does not appraise residential property fairly and rule that the appraisal amount will be the last sale price of all property, to be changed only after the next sale by a willing seller to a willing buyer. This

should assure me of equal protection under the 14th Ammendment of the U. S. Constitution.

In Nordlinger v. Hahn, 112 S. ct. 2326(1992) the court ruled that the method of assessments should be on the sale price.

I strongly disagree with the District Court that my claim is frivolous, unreasonable and without foundation.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgement and opinion of the Court of Appeals and rule in favor of the above rule.

The Supreme Court oath of office states "I do solomnly swear that I will administer justice without respect to persons, and do equal right to the poor

and to the rich", Marbury v. Madison, 1 c.137 (1803).

Miranda v. Arizona 384 US 436,p.491 states: "Where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them."

Dated 6-6-95

Respectfully submitted,

John C. Hume

JOHN C. HUME

PETITIONER

(2)

Supreme Court, U.S.
FILED

95 • 460 JUN 12 1995

OFFICE OF THE CLERK

CASE NO.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

JOHN C. HUME, PRO SE - PETITIONER

vs.

HAROLD STERLING, INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY ASSESSOR OF PROPERTY, AND BOB PATTERSON, INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY TRUSTEE, AND WILLIAM N. MORRIS, JR., INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY MAYOR.

- RESPONDENTS

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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APPENDIX

U.S. DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE - WESTERN DIVISION

JOHN C. HUME, PLAINTIFF

vs.

HAROLD STERLING, ET AL, DEFENDANTS

NO. 94-2154 GA

ENTRY DATE 7-21-94

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

Before the court is the motion to dismiss filed by defendants--Harold Sterling, individually and in his official capacity as Shelby County Assessor of Property, Bob Patterson, individually and in his official capacity as Shelby County Trustee and William N. Morris, Jr., individually and in his official capacity as Shelby County Mayor. Pro se plaintiff, John C. Hume, brought this action pursuant to 42 U.S.C § 1983. Plaintiff alleges that the

method of property tax assessment in Shelby County, Tennessee is arbitrary and in violation of Article 3, Article 4 and the Tenth, Fourteenth and Fifth Ammendments to the United States Constitution and seeks a refund of taxes paid. Because this court is deprived of subject matter jurisdiction over this matter by the Tax Injunction Act, 28 U.S.C. § 1341, plaintiff's case is dismissed.

The Tax Injunction Act provides that "(t)he district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. S 1341. The proscriptions of the Tax Injunction Act extend to suits in federal court to collect a tax refund. See, e.g., Aluminum Co. of America v. Dept. of Treasury, 522 F.2d 1120 (6th Cir. 1975). "This exclusion of federal courts

from the state taxation area is so far reaching it precludes federal courts from declaring state tax laws unconstitutional." Thiokol Corp. v. Dept. of Treasury, 987 F.2d 376, 378 (6th Cir. 1993) (citing Fair Assessment in Real Estate Ass'n v. McNary, 454 U.S. 100, 103 (1981) and Great Lakes Dredge and Dock Co. v. Huffman, 319 U.S. 293 (1943)). Thus, the exclusion encompasses 42 U.S.C. S 1983 damage actions as well. Thiokol Corp., 987 F.2d at 378.

Having established conclusively that plaintiff's section 1983 action implicates the Tax Injunction Act, the court must determine whether Tennessee provides plaintiff with a "plain, speedy and efficient remedy" in the courts of the state. Judicial review of decisions of the Tennessee state board of equalization with re-

gard to property taxes is provided for under T.C.A. S 67-5-1511. That section provides:

(a) The action of the state board of equalization shall be final and conclusive as to all matters passed upon by the board, subject to judicial review, and taxes shall be collected upon the assessments determined and fixed by the board.

(b) The judicial review provided in subsection (a) shall consist of a new hearing in chancery court based upon the administrative record and any additional or supplemental evidence which either party wishes to adduce relevant to any issue. The petition for review may be filed in the chancery court of Davidson County or the county where the disputed assessment was made.

The provision allowing the parties to introduce any new evidence desired was

added to the section in amendments that became effective in 1992. See, e.g., Richardson v. Tennessee Assessment Appeals Comm'n, 828 S.W.2d 403,404 (Tenn. Ct. App. 1991)(discussing previous version of T.C.A. § 67-5-1511, which confined review in chancery court to the administrative record).

In Northwest Airlines, Inc. v. Tennessee State Board of Equalization, 11 F.3rd 70 (6th Cir. 1993), the United States Court of Appeals for the Sixth Circuit held that the Tax Injunction Act did not preclude federal court review of four commercial airlines' suit to enjoin Tennessee's method of taxing air carrier property located in Tennessee. With respect to air carrier property taxation, the review provisions in effect at the time of the Northwest Airlines case provided for review of the Board's decision by the Tennessee Court of Appeals. Id. at 73. In

such cases, however, the Tennessee Court of Appeals' review was limited to the administrative record. Id. This "peculiar fact" led the Sixth Circuit to find a "rare exception to the general rule" that the Tax Injunction Act prohibits federal court adjudication of state tax questions. Id.

In the instant case, judicial review of the administrative record, supplemented by any evidence the parties wish to introduce, is provided for in disputes over state property taxes. The court finds , therefore, that the state has provided a "plain, speedy, and efficient remedy" for plaintiff.

Plaintiff lists a number of cases that he claims establish his right to pursue this case in federal court. Only one of plaintiff's cases is even remotely on point. Nordlinger v. Hahn, ___U.S.___, 112 S.Ct. 2326 (1992), involves a citizen's equal

protection challenge to the California property tax system. Plaintiff apparently cites the case for the proposition that such suits may be brought in federal court. However, the plaintiff in Nordlinger brought her case through the state court system with a final appeal to the United States Supreme Court, which was the first and only federal court to review her claim. Id.

Accordingly, plaintiff's cause of action in federal court is precluded by the Tax Injunction Act and is hereby dismissed.

IT IS SO ORDERED.

Signed JULIA SMITH GIBBONS

U.S. DISTRICT JUDGE

July 19, 1994

DATE

U.S. DISTRICT COURT - WESTERN DISTRICT

OF TENNESSEE - WESTERN DIVISION

JOHN C. HUME, PLAINTIFF

vs.

HAROLD STERLING, et al, DEFENDANTS

NO. 94-2154-GA

ENTRY DATE 8-3-94

JUDGMENT IN A CIVIL CASE

It is so ordered and adjudged that in accordance with the Order Granting Defendants' Motion to Dismiss entered July 21, 1994, this case is hereby dismissed.

APPROVED: Signed JULIA SMITH GIBBONS

U.S. DISTRICT JUDGE

AUG.3, 1994 ROBERT R. DI TROLIO

DATE CLERK

U.S. DISTRICT COURT - WESTERN DISTRICT

OF TENNESSEE - WESTERN DIVISION

JOHN C. HUME, PLAINTIFF

vs.

HAROLD STERLING, et al, DEFENDANTS

NO. 94-2154-HA

ENTRY DATE 11-9-94

ORDER TAXING COSTS

In this cause, defendant filed an itemized cost bill totalling $25.59 for printing fees, and for fees for exemplification and copies of papers necessarily obtained for use in this case.

Notice was given to permit these parties opportunity to be heard concerning the cost bill. Plaintiff appeared to oppose the assessment. Counsel for defendant did not appear in support of the assessment of costs, relying, instead, on the record. As a result of the hearing and matters reflected in the file, costs are taxed

against plaintiff and in favor of defendant as follows:

Printing fees	16.50
Exemplification and copy fees	$ 9.00
TOTAL	$25.50

Pursuant to Rule 54(d), the action of the clerk may be reviewed by the court upon motion, served within 5 days of the docketing of this order.

Signed ROBERT R. DI TROLIO

CLERK

U.S. DISTRICT COURT - WESTERN DISTRICT

OF TENNESSEE - WESTERN DIVISION

JOHN C. HUME, PLAINTIFF

vs.

HAROLD STERLING, et al, DEFENDANTS

NO. 94-2154-HA

ENTRY DATE 11-14-94

ORDER OF REFERENCE

It is hereby ORDERED the above styled case be referred to the United States Magistrate for report and recommendation on the Motion for Attorney's fees in accordance with 28 U.S.C. §636(b) (1) (B).

Any exceptions or objections to the Magistrate's report and recommendation or determination shall be made by motion within ten (10) days of the report and shall set forth with particularity those portions excepted to and the reasons for the exceptions. A failure to timely object shall be deemed a waiver to objections, exceptions and further appeal.

It is so ORDERED this the 14 day of November, 1994.

Signed ODELL HORTON, JUDGE

U.S. DISTRICT COURT

U.S. COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOHN C. HUME, PLAINTIFF

vs.

HAROLD STERLING, et al, DEFENDANTS

NO. 94-6103

ENTRY DATE 3-14-95

ORDER

BEFORE: KENNEDY, KRUPANSKY AND NORRIS, CIRCUIT JUDGES.

John C. Hume, a pro se Tennessee resident, appeals a district court judgment dismissing his civil rights action filed pursuant to 42 U.S.C. §§ 1983 and 1985. The case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P.34(a). Seeking monetary relief, Hume sued multiple officials of Shelby County, Tenn-

essee, contending that the method used to assess the residential property in Shelby County was illegal and arbitrary. The county officials were sued in their individual and official capacities. The district court dismissed the complaint for lack of jurisdiction.

In his timely appeal, Hume essentially argues that the district court erred by ignoring the United States Supreme Court's decision of Nordlinger v. Hahn, 112 S. Ct. 2326(1992).

The dismissal of a complaint pursuant to Fed. R. Civ. P. 12(b)(1) is reviewed de novo. Ynclan v. Department of Air Force, 943 F.2d 1388, 1390 (5th Cir. 1991).

The Tax Injunction Act, 28 U.S.C. § 1341, precludes Hume from receiving the relief he seeks. The Tax Injunction Act provides, in part, that a district court cannot enjoin, suspend, or restrain the assessment, levy, or collection of any tax

under state law where a speedy and effecient remedy exists in the courts of that state. Id. The Act is to prevent federal intervention with the important local concern of tax collection, see California v. Grace Brethren Church, 457 U.S. 393, 408-11 (1982): In re Gillis, 836 F.2d 1001, 1004 n.2 (6th Cir. 1988). and even precludes federal courts from declaring state tax laws unconstitutional. Thiokol Corp. v. Department of Treasury, 987 F.2d 376,378 (6th Cir. 1993). The Act is also applicable to S 1983 actions challenging the validity of state tax systems. Fair Assessment in Real Estate Ass'n v. McNary, 454 U.S. 100, 116 (1981). Under Tenn. Code Ann. § 67-5-1511, Hume may appeal the decision of Tennessee's Board of Equalization to the state courts of Tennessee. Judicial review of the Board's decision must consist of a new hearing based on the administrative record

and any additional evidence the parties may submit. Thus, Hume has a speedy and efficient remedy in the state courts of Tennessee to challenge his property assessment.

Hume contends that the district court ignored the Supreme Court's decision of Nordlinger v. Hahn, 112 S. Ct. 2326 (1992). However, Nordlinger is not applicable to this case as Nordlinger involved a question of whether California's property tax scheme violated the Equal Protection Clause. Id. at 2331-35. Here Hume simply objects to the assessed value of his property. Further, unlike Nordlinger, Hume did not raise his objections through the state court system prior to seeking federal intervention.

Finally, Hume has not stated a claim under 42 U.S.C. § 1985. See Griffin v. Brecken-

ridge, 403 U.S. 88, 102-03 (1971); Seguin v. City of Sterling Heights, 968 F.2d 584, 590 (6th Cir. 1992).

Accordingly, we affirm the district court's judgment. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Signed LEONARD GREEN

CLERK

U.S. DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE - WESTERN DIVISION

JOHN C. HUME, PLAINTIFF

vs.

HAROLD STERLING, et al, DEFENDANTS

NO. 94-2154-GA

ENTRY DATE 3-24-95

REPORT AND RECOMMENDATION

Before the court is the motion by defendants for an award of reasonable attorney's fees against plaintiff, pursuant to 42 U.S.C. §1988. This matter has been referred to the United States Magistrate Judge for report and recommendation.

Plaintiff John C. Hume, who is an owner of two (2) parcels of real estate in Memphis, Shelby County, Tennessee, has brought a pro se action under 42 U.S.C. S1983 against Harold Sterling, the duly elected Assessor of real estate in Shelby County; Bob Patterson, the duly elected Shelby County Trustee (who receives payment of

real estate taxes in Shelby County); and William N. Morris, Jr., the then duly elected Mayor of Shelby County. In this action, plaintiff sought an order directing defendants to refund a portion of real estate taxes that plaintiff paid, under protest, on his two (2) parcels of real estate. Plaintiff asserted that the method of assessing residential real estate in Shelby County was illegal and arbitrary, violating certain of plaintiff's rights under the United States Constitution.

Defendants filed a motion to dismiss, asserting that this court had no subject matter jurisdiction of plaintiff's complaint because of the Tax Injunction Act (28 U.S.C. §1341). The district judge agreed with the defendant's position, and dismissed plaintiff's complaint. On March 10, 1995, the United States Court of

Appeals for the Sixth Circuit affirmed the decision of the district judge.

Defendants have now asked this court to award the amount of their reasonable attorney's fees in this cause against plaintiff under 42 U.S.C. §1988.

Under the provisions of 42 U.S.C. S1988(b) this court may, in its discretion, in an action under 42 U.S.C. §1983, "allow the prevailing party .. a reasonable attorney's fee as part of the costs".

While it would seem, from a purely textual analysis of §1988(b), that the rule would apply equally, whether the "prevailing party" were a plaintiff or a defendant, such is not the case. A prevailing plaintiff is more likely to obtain an award of attorney's fees under §1988(b) than a prevailing defendant.

A prevailing defendant may recover attorney's fees from the plaintiff under §1988 only if the court finds that the

plaintiff's action was "frivolous, unreasonable or without foundation, even though not brought in subjective bad faith". Hughes vs. Rowe, 449 U.S. 5, 14 (1980) (following Christiansburg Garment Co. vs. E. E. O. C., 434 U.S. 412,421 (1978), and applying its standard to §1983 cases). In order for defendant to recover attorney's fees from plaintiff under this standard, plaintiff's action must be "meritless, in the sense that it is groundless or without foundation". Hughes at p. 14.

Under this standard, it is submitted that plaintiff's complaint herein was "meritless", "groundless", and "without foundation". Both the district judge and the Court of Appeals for the Sixth Circuit ruled that the Tax Injunction Act (28 U.S.C. §1341) precluded plaintiff from receiving the relief sought, and that plaintiff had a speedy and efficient

remedy in the courts of Tennessee to challenge his property assessment. Further, both courts concluded that plaintiff's reliance upon Nordlinger vs. Hahn, U.S., 112 S. Ct. 2326 (1992) was clearly inappropriate.

It is submitted that, since plaintiff's complaint was meritless, groundless, and without foundation, defendants' reasonable attorney's fees should be assessed against plaintiff.

Defendants' counsel has filed materials indicating that he spent a total of 53.6 hours (41.8, 5.7, 5.9, and .2 hours) in handling this case to this point. He has indicated that, for most of these hours, he charged $55.00 an hour. Later, the hourly rate increased to $90.00 an hour, and recently his hourly rate increased to $125.00 an hour. The total attorney's fee claimed is $3,644.00.

It is submitted that the hours spent, and the hourly rate charged, are reasonable, and that plaintiff should be ordered to pay to counsel for defendants the sum of $3,644.00, representing defendants' reasonable attorney's fees.

Further, defendants have asserted that they incurred copying fees of $1.35, and it is submitted that this is a reasonable charge, and plaintiff should pay it.

Under these circumstances, it is therefore RECOMMENDED that plaintiff should pay to counsel for defendants the total sum of $3,645.35 within ninety (90) days of the docketing of the order of this court approving the within report and recommendation.

All parties are advised that all objections to this report and recommmendation must be filed within ten (10) days or such objections may be deemed waived by the District Court.

Additionally, such a failure to file within ten (10) days may be treated as a waiver of the right to appeal the District Court's order hereon. U.S. vs. Walters, 639 F. 2d. 927 (6th Cir. 1981);Patterson v. Mintzes,717F. 2d. 284 (6th Cir. 1983); Thomas vs. Arn, 474 U.S. 140(1985); see also FED. R. CIV. P. 72(b).

22 March 1995 JAMES H. ALLEN, U.S.MAG.JDG.

U. S. COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOHN C. HUME, PLAINTIFF - APPELLANT

v.

HAROLD STERLING, et al, DEFENDANTS -

APPELLEES

NO. 94-6103

ENTRY DATE 4-12-95

MANDATE

Pursuant to the court's disposition that was filed 3/10/95 the mandate for this case hereby issues today.

A True Copy.

COSTS: NONE Attest:

Filing Fee....$ Signed Patricia Elder

Printing .....$ Deputy Clerk

Total.....$

U.S. DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE - WESTERN DIVISION

JOHN C. HUME, PLAINTIFF

v.

HAROLD STERLING, et al, DEFENDANTS

NO. 94-2154-H

ENTRY DATE 4-28-95

ORDER ACCEPTING REPORT AND RECOMMENDATION

Defendants in this case have requested attorney's fees from Plaintiff pursuant to 42 U.S.C. § 1988. Under provisions of that statute, a court may in its discretion, in an action under 42 U.S.C. §1983. Magistrate Judge James Allen entered a ruling on March 24, 1995 recommending that attorney's fees be granted to Defendants. Pro se Plaintiff, John Hume has filed a timely objection to the Magistrates report and recommendation.

Background

Plaintiff brought a pro se action under 42 U.S.C. § 1983 and claiming that Shelby

County's method of residential property tax assessment is illegal and arbitrary and that it violates certain of plaintiff's rights under the United States Constitution.

Defendants filed a motion to dismiss, arguing that this court had no subject matter jurisdiction of Plaintiff's complaint because of the Tax Injunction Act, 28 U.S.C. § 1341.

The district court agreed with the defendant's position and dismissed Plaintiff's complaint. The district court decision was affirmed by the Sixth Circuit Court of Appeals.

Defendants filed for an award of attorney's fees under 42 U.S.C. § 1988, stating that they are entitled to an award because they are the prevailing parties in an action to enforce § 1983 and because the action was frivolous, unreasonable and without foundation.

Magistrate's Report

The Magistrate found that Plaintiff's complaint was "meritless, groundless and without foundation". The Magistrate stated that "both the district judge and the Court of Appeals for the Sixth Circuit ruled that the Tax Injunction Act (28 U.S.C. S 1341) precluded plaintiff from receiving the relief sought, and that plaintiff had a speedy and efficient remedy in the courts of Tennessee to challenge his property assessment." In addition, the Magistrate noted that both courts concluded that plaintiff's reliance upon Nordlinger v. Hahn, 112 S. ct. 2326 (1992) was clearly inappropriate. The Magistrate then concluded that reasonable attorney's fees should be assessed against plaintiff. The defendant was awarded $3,645.35 for attorney's fees and costs. Plaintiff Hume filed an objection to the Magistrate's report and recommendation.

In his objection, Hume restated his argument that Nordlinger should be applied to his case. In addition, Hume stated that the district court was in error when it dismissed his complaint. Hume did not offer any reasons why attorney's fees should not be granted in this case.

Upon de novo review of the issues in this case, the Court finds the report is not clearly erroneous or contrary to law and as such should be adopted at this time. See Flournoy v. Marshall, 842 F.2d 875 (6th Cir. 1985). Accordingly, the court hereby ADOPTS the Magistrate's report and recommendation granting attorney's fees to the defendant in the sum of $3,645.35. This decision closes the case in this Court.

It is so Ordered this 27 day of April, 1995.

Signed ODELL HORTON, JUDGE

U.S. DISTRICT COURT

Supreme Court, U.S.
FILED
NOV 17 1995
CLERK

(3)

CASE NO. 95-460

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

JOHN C. HUME, PRO SE - PETITIONER

VS.

HAROLD STERLING, INDIVIDUALY AND IN HIS CAPACITY AS SHELBY COUNTY ASSESSOR OF PROPERTY, AND BOB PATTERSON, INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY TRUSTEE, AND WILLIAM N. MORRIS, JR., INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY MAYOR.

- RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BEST AVAILABLE COPY

CASE NO. 95-460

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

JOHN C. HUME, PRO SE - PETITIONER

vs.

HAROLD STERLING, INDIVIDUALY AND IN HIS CAPACITY AS SHELBY COUNTY ASSESSOR OF PROPERTY, AND BOB PATTERSON, INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY TRUSTEE, AND WILLIAM N. MORRIS, JR., INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY MAYOR.

- RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED

I. WHETHER BOTH COURTS BELOW CORRECTLY HELD THAT THE U.S. DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION OVER PETITIONER'S COMPLAINT PURSUANT TO 28 U.S.C. §1341, THE TAX INJUNCTION ACT.

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	ii
Table of Authorities	iii
Opinions Below	1
Grounds of Jurisdiction of Supreme Court	2
Statutory Provisions Involved	2
Statement of the Case	4
Summary of Argument	7
Argument	9
Conclusion	17
Certificate of Service	18

TABLE OF AUTHORITIES

CASES: **PAGE**

Fair Assessment in Real Estate Association v. McNary, 454 U.S. 100 (1981) . 7, 9, 10,11

Hillsborough Twp. v. Cromwell, 326 U.S. 620 (1946) 14

Nordlinger v. Hahn, U.S. ____, 112 S.Ct. 2326 (1992) 14, 15

Louisville and Nashville R. Co. v. Public Serv. Com., 249 F. Supp. 894 (M.D. Tenn. 1966). 13, 14

Richardson v. Assessment Appeals Com.'n, 828 S.W.2d 403 (Tenn. App. 1991) 14

Snow v. City of Memphis, 527 S.W.2d 55 (Tenn. 1975) 14

STATUTES: **Page**

28 U.S.C. §1254(1) 2

28 U.S.C. §1341 . . . . . i, 2, 5, 7, 9, 13

42 U.S.C. §1983 . . . . . 7, 9, 10,11

Tenn. Code Ann. §67-5-1511 . . . . 2, 3, 5, 7, 12

OPINIONS BELOW

The March 14, 1995 opinion of the United States Court of Appeals for the Sixth Circuit, whose judgment is herein sought to be reviewed, is case no. 94-6103, is unpublished and is reprinted in the separate Appendix to this Petition, pp. 13-17. The prior Opinion of the United States District Court for the Western District of Tennessee entered on July 21, 1994 is case no. 94-2154 GA, is unpublished and is reported in the separate Appendix to this Petition, pp. 1-7.

JURISDICTION

The judgment of the Court of Appeals was entered on March 14, 1995. The Petition for Writ of Certiorari was filed on June 12, 1995; however, it was not docketed until September 18, 1995. The Court extended Respondents' time to file their Brief in Opposition to 20 November 1995. The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTES INVOLVED

28 U.S.C. §1341

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

Tenn. Code Ann. §67-5-1511

(a) The action of the state board of equalization shall be final and conclusive as to all matters passed upon by the board subject to judicial review, and taxes shall

be collected upon the assessments determined and fixed by the board.

(b) The judicial review provided in subsection (a) shall consist of a new hearing in the chancery court based upon the administrative record and any additional or supplemental evidence which either party wishes to adduce relevant to any issue. The petition for review may be filed in a chancery court of Davidson County or the county where the disputed assessment was made.

STATEMENT OF THE CASE

Certain property owned by Petitioner in Shelby County, Tennessee was reappraised in 1991 (Pet. 2-3). The reappraised values were higher than before and Petitioner contested the reappraisal. Petitioner alleges that he interviewed with representatives from the Shelby County Tax Assessor's Office, filed appeals with the Shelby County Board of Equalization, filed appeals with the State Board of Equalization and participated in a State of Tennessee Assessment Appeals Commission Hearing (Pet. 3). Petitioner then filed a Complaint in the United States District Court challenging the residential property assessment method employed in said reappraisals on the grounds that it violated his constitutional rights (Pet. App. 1-2).

Respondents filed a Motion to Dismiss on the grounds the District Court lacked subject matter jurisdiction pursuant to 28 U.S.C. §1341, the Tax Injunction Act, in that Petitioner must first file a lawsuit in Tennessee State Court pursuant to T.C.A. §67-5-1511. The District Court granted Respondents' Motion noting that since T.C.A. §67-5-1511 provided judicial review of property tax issues in Tennessee State Court, Petitioner had a "plain, speedy and efficient remedy" and, therefore, the Tax Injunction Act deprived the District Court of subject matter jurisdiction (Pet. App. 3-7).

The Petitioner appealed the District Court's ruling of his Complaint but, on March 14, 1995, the United States Court of Appeals for the Sixth Circuit upheld the District Court (Pet. App. 17). The Court

of Appeals also noted that Petitioner "has a speedy and efficient remedy in the State courts of Tennessee to challenge his property assessment." (Pet. App. 16)

The Petitioner is now before this Court seeking review on Writ of Certiorari.

SUMMARY OF ARGUMENT

28 U.S.C. §1341 bars lawsuits in Federal Court challenging State tax systems where a "plain, speedy and efficient remedy" exists in the courts of said State. The United States Supreme Court in Fair Assessment in Real Estate Association vs. McNary, 454 U.S. 100 (1981) held that §1341 and the "principle of comity" bar lawsuits like Petitioner's which are brought under 42 U.S.C. §1983 to address an allegedly unconstitutional administration of a state tax system. Both lower courts here have correctly held that T.C.A. §67-5-1511 provides Petitioner with a plain, speedy and efficient remedy for challenging Shelby County's reappraisal method and therefore the Federal Courts lack subject matter jurisdiction over his Complaint. (Pet.

App. 6-7 and 16-17).

Petitioner has not shown that the Court of Appeals' decision conflicts with opinions of this Court or any other Courts of Appeals. Petitioner has not shown that this Court's supervision is necessary in this matter. Further, this Court has already decided questions raised in the Petition. Petitioner has failed to show the existence of any special and important reasons why his Petition for Writ of Certiorari should be granted and therefore the Petition should be denied.

ARGUMENT

I. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE COURT OF APPEALS' DECISION AFFIRMING THE DISTRICT COURT'S DISMISSAL OF PETITIONER'S COMPLAINT PURSUANT TO 28 U.S.C. §1341, THE TAX INJUNCTION ACT, IS CORRECT AND THERE IS NO CONFLICT OR ANY OTHER BASIS FOR FURTHER REVIEW BY THIS COURT.

28 U.S.C. §1341 states:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

In Fair Assessment of Real Estate Association v. McNary, 454 U.S. 100 (1981), this Court applied §1341 in the context of a damages action brought under 42 U.S.C. §1983 to redress the allegedly unconstitutional administration of a state tax system. In McNary, Petitioners filed a

Complaint arguing that County and State tax personnel and entities had "... deprived them of equal protection and due process of law by unequal taxation of real property." Id. at 106. The District Court held, and the Eighth Circuit affirmed, that the lawsuit was barred by both the Tax Injunction Act and the principle of comity. Id. at 102. This Court granted certiorari and affirmed. Id.

The McNary court noted that a §1983 damages action would be unduly intrusive into the state tax scheme and would be unduly disruptive of the enforcement of the scheme. Id. at 113-114. The Court stated that it considered "... such interference to be contrary to '[t]he scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts.'" (citations

omitted) Id. at 115-116. It therefore held that:

> ... taxpayers are barred by the principle of comity from asserting §1983 actions against the validity of state tax systems in federal courts. Such taxpayers must seek protection of their federal rights by state remedies, provided of course that these remedies are plain, adequate, and complete and may ultimately seek review of the state decisions in this Court.

Id. at 116.

In the case at bar, Petitioner filed a §1983 damages action against certain county officials to redress the alleged unconstitutionality of the relevant method of property appraisal for tax purposes (Pet. App. 1-2). The District Court concluded that the "... action implicates

the Tax Injunction Act..." (Pet. App. 3). The District Court further concluded that T.C.A. §67-5-1511, which provides for judicial review of state decisions regarding property taxes, is a "plain, speedy, and efficient remedy" for Petitioner within the meaning of the Tax Injunction Act (Pet. App. 6). On this basis, the District Court correctly dismissed the Complaint as barred by the Tax Injunction Act. In his appeal to the U.S. Court of Appeals, Petitioner did not challenge the District Court's conclusion that §67-5-1511 constitutes a "plain, speedy, and efficient remedy." On the contrary, Petitioner's only rejoinder is that filing a lawsuit in state court would be "unwise" (R.8: Memorandum at 2). Petitioner repeats that argument here by stating that filing a lawsuit in state

court would be unnecessarily "costly in fees and time" (Pet. App. 4).

Petitioner now also asserts that "... I could plainly not receive a plain, speedy and efficient remedy in the state of Tennessee..." (Pet. 4). Petitioner cites Louisville and Nashville R. Co. v. Public Serv. Com., 249 F. Supp. 894 (M.D. Tenn. 1966) which, in turn, cites Hillsborough Twp. v. Cromwell, 326 U.S. 620 (1946) for the proposition that "... [in] these cases state remedies were held inadequate so as not to preclude federal jurisdiction under 1341 ..." (Pet. 4). However, since 1966, when Louisville, supra, was decided, Tennessee has: amended its Constitution regarding property taxation; adopted the Tennessee Uniform Administrative Procedures Act regarding review of administration decisions; and, expanded the remedy

available to those challenging tax decisions. See Snow v. The City of Memphis, 527 S.W.2d 55 (Tenn. 1975); see also T.C.A. §§4-5-101, et seq.; see also Richardson v. Assessment Appeals Com.'n, 828 S.W.2d 403 (Tenn. App. 1991). The conclusion in Louisville, supra, regarding the remedy available in 1966 clearly does not apply to the remedy available now; a remedy both courts below held is plain, speedy and efficient. Regardless, Petitioner's stated purpose in this litigation has been to have "... the U.S. Supreme Court decision in Nordlinger v. Hahn [_____ U.S. _____, 112 S.Ct. 2326 (1992) ruled] ... the law of the land and assess my property as the court instructed. It is the only intelligent way to assess property for tax purposes" (App. Brief at p.2). The Nordlinger court merely held

that the State of California's method for assessing property *in California* does not violate the Equal Protection Clause. See Nordlinger, supra, at 2332, 2333 and 2336. Nordlinger did not "instruct" other states to substitute their assessment methods for that of California. Both courts below thus deemed Nordlinger "not applicable" to Petitioner's case (Pet. App. 6-7 and 16).

Lastly, Petitioner apparently raises an issue that is currently on appeal in the United States Court of Appeals for the Sixth Circuit -- the awarding of attorneys' fees to Respondents. After the Sixth Circuit affirmed the District Court's dismissal of Petitioner's Complaint, the District Court granted Respondent's Motion for Attorneys' Fees as the prevailing party (Pet. App. 27-29). Petitioner has appealed that award and the Sixth Circuit has yet to

decide the appeal. This Court therefore lacks jurisdiction at this point to consider the District Court's awarding of attorneys' fees.

CONCLUSION

The Court of Appeals' decision affirming the District Court's dismissal of Petitioner's Complaint does not conflict with any decision of this Court or any other Court of Appeals. In fact, the decision follows Supreme Court precedent. Further, there is no reason for this Court to exercise its supervisory authority here. No special or important reasons exist for granting this Petition for Writ of Certiorari and therefore Respondents respectfully request the Petition be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that three copies of the foregoing have been mailed postage prepaid to Mr. John Hume, 2176 Jefferson Avenue, Memphis, Tennessee 38104, on this the 17TH day of November, 1995.

_____
Richard J. Myers-#15577

Supreme Court, U.S.
FILED
DEC. 5 1995
CLERK

CASE NO. 95-460

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1995

JOHN C. HUME, PRO SE - PETITIONER

vs.

HAROLD STERLING, INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY ASSESSOR OF PROPERTY, AND BOB PATTERSON, INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY TRUSTEE, AND WILLIAM N. MORRIS, JR., INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY MAYOR.

- RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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11 pp

TABLE OF CONTENTS

	PAGE
Table of Contents	i
Table of Authorities	ii
Statement	1
Conclusion	8

TABLE OF AUTHORITIES

CASES:	PAGE
Fair Assessment in Real Estate Assn. v. McNary 454 U.S. 100 (1981)103,104	4,5
McNeese v. Board of Education 373 U.S. 668 (1963)674	4
Monroe v. Pape 365 U.S. 167 (1961)	4
Nordlinger v. Hahn U.S. 112 S. Ct. 2326,10	6
State Ex Rel. Marshall v. District Court Dec. T. 74,50 Mont., 292	1
STATUTES:	
28 U.S.C. § 1983	3
28 U.S.C. § 1343	4
U.S. Const., Art.111 § 1	5
T.C.A. 67-5-601	1

STATEMENT OF THE CASE

The property appraisal for tax purposes in Shelby County in Tennessee is arbitrary and unfair. After spending several years going through appeals in Tennessee all of the way through the State of Tennessee Assessment Appeals Commission it was apparent that more appeals in Tennessee would not be a "plain, speedy, and efficient remedy". I claim my constitutional right to go to the federal court. State Ex Rel. Marshall v. District Court Dec.T.74,50 Mont.,292 states:

> A remedy is speedy when, having in mind the subject matter involved, it can be pursued with expedition and without essential detriment to the party aggrieved: and it is neither speedy nor adequate if its slowness is likely to produce immediate injury or mischief.

The property in Shelby County owned by the Petitioner has been speculatively appraised at a high rate based on the selling price of other property. Tenn.Code Annotated 67-5-601 states "The value of

all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values". The last sale price of a piece of property is the only true amount for tax purposes until it is sold again by a willing seller to a willing buyer. When you buy a property, you should be able to plan to pay taxes on the assessed percent of that amount. The rate could then be adjusted as necessary. All residential and commercial property should be appraised on that last sale price. Exceptions should not be made for certain properties.

The Respondents state that Petitioner has failed to show the existence of any special and important reasons why my Petition for Writ of Certiorari should be granted (Brief in Opposition, Pg.8). My

reasons are clear. After three years of appeals, paying my taxes on exorbitant appraisals, and the costs of every court to which you may appeal, costs money at every turn and takes precious time. The system seems to be built to throughly discourage private property owners from securing justice from a federal court even when a constitutional question on the legality of how a state is conducting certain practices comes into question.

28 U.S.C. § 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in action at law, suit in equity, or other proper proceeding for redress.

"Obviously 1983 cut a broad swath. By its terms it gave a federal cause of

action to prisoners, taxpayers, or anyone else who was able to prove that his constitutional or federal rights had been denied by any State. In addition, the statutes made no mention of any requirement that state remedies be exhausted before resort to the federal courts could be had under 28 U.S.C. § 1343." Fair Assessment in Real Estate Assn. v. McNary 454 U.S. 100 (1981) 103,104.

"It is immaterial whether [the state official's] conduct is legal or illegal as a matter of state law. Such claims are entitled to be adjudicated in the federal courts." McNeese v. Board of Education, 373 U.S. 668 (1963) 674.

In Monroe v. Pape, 365 U.S. 167 (1961) it proves that comity does not apply where § 1983 is involved, and that a litigant challenging the constitutionality of any state action may proceed directly to federal court.

Surely no judicial power to fashion novel doctrine concerning the jurisdiction of federal courts is to be found in the Constitution itself, which provides that the judicial power "shall be vested in one supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish". U.S. Const., Art.111, § 1.

"But there is absolutely no support in either the cases of this Court, or in Congress' action, for total abdication of federal power in this field. It is thus entirely clear that as a jurisdictional matter, the federal courts have jurisdiction over claims seeking monetary relief arising from unconstitutional state taxation." Fair Assessment in Real Estate Assn. v. McNary 454 U.S. 100 (1981) 133.

Another obvious proof that the appraisals in Shelby County are arbitrary is that there is great disparity in land value assigned. On my two pieces of property, a 50X200 sq. ft. lot is valued at $15,300.00 and a 61.5X200 sq. ft. lot is valued at $8,000.00.

The taxpayers are told to show the tax assessor "comparables" of recently sold property in their vicinity. The "intrinsic" value of properties would be totally speculative because some property has been totally renovated, others have not.

The records at the tax assessor's office show that the appraisal on one of my two pieces of property is scheduled to be increased in 1996 from $41,300.00 to $79,500.00. This is a 92.5% increase in five years and totally speculative.
I am being taxed out of my home.
Nordlinger v. Hahn U.S. 112 S.Ct. 2326,10,

states "In short, the State may decide that it is worse to have owned and lost, than never to have owned at all."

A ruling in my favor would not be disruptive to the state collection of taxes. It would just change an arbitrary tax appraisal system to be fair and equitable.

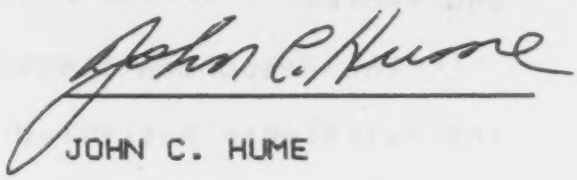
The Respondents stated the fact that the Petitioner has filed an appeal in the United States Court of Appeals for the Sixth Circuit, Case No. 95-5743,---the awarding of attorneys' fees to Respondents. This court does have the power to rule that this claim is not frivolous; unreasonable and without foundation, it is a legitimate claim. I would like for this court to rule this. In that case, attorneys' fees would not be awarded.

CONCLUSION

The Supreme Court does have the power to exercise its supervisory authority here. Petitioner respectfully requests that my Petition for Writ of Certiorari be considered with due respect.

Dated 12-5-95

Respectfully submitted,



JOHN C. HUME

PETITIONER